UNITED STATES PATENT AND TRADEMARK OFFICE

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

PTOL-90A (Rev. 04/07)

	Application No.	**Applicant(s)**
Office Action Summary	10/608,686	VASUDEVA, VIVEK
	Examiner	**Art Unit**	
	Benjamin R. Bruckart	2155	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>06 November 2007</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16,18-40,42-51 and 53-65* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16, 18-40, 42-51, 53-65* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

Detailed Action

Claims 1-122 are pending in this Office Action.

Claims 66-121 are withdrawn as non-elected by the restriction requirement.

Claims 1-65 are presented for examination.

Claims 1 and 44 are amended.

Claims 17, 41 and 52 remain cancelled.

Response to Arguments

Applicant's arguments filed in the amendment filed 10/8/07, have been fully considered

but they are not persuasive. The reasons are set forth below.

<u>Applicant's invention as claimed</u>:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis

for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999

(AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002

do not apply when the reference is a U.S. patent resulting directly or indirectly from an

international application filed before November 29, 2000. Therefore, the prior art date of the

reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA

35 U.S.C. 102(e)).

**Claims 1-10, 12-16, 18, 20-30, 32-35, 37-38, 40, 43; 44-50, 52-63 are rejected under
35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,143,153 by Black et al.**

Regarding claim 1, a system to monitor performance (Black: col. 2, lines 24-25), comprising:

at least one probe to collect data and metrics related to performance of an associated

domain (Black: col. 167, lines 49-64), each at least one probe being embedded in the associated

domain (Black: col. 12, lines 29-67; Fig 2b) and including an associated control module

containing user selectable parameters for controlling operation of each probe (Black: col. 12,

lines 61- col. 13, line 11; col. 167, lines 14-col. 168, line 14), the user selectable parameters

comprising at least one of a type of data to be collected by the probe or a metric to be collected

by the probe (Black: col. 167, lines 65- col. 168, line 30); and

at least one base station to receive the collected data or metric from associated ones of the

at least one probe (Black: col. 167, lines 49-64),

wherein each at least one probe may dynamically receive a new control module

containing changes to the user selectable parameters and operate using the changes without

affecting operation of the associated domain (Black: col. 167, line 66- col. 168, line 48; col. 168,

line 59-col. 170, line 24).

Regarding claim 2, the system of claim 1, wherein the at least one probe comprises a system

probe to gather at least one of operating system data, network data and performance data related

to operation of an associated host processor (Black: col. 37, lines 19-35).

Regarding claim 3, the system of claim 2 wherein the system probe comprises a data structure to

gather kernel data (Black: col. 96, lines 22-63).

Regarding claim 4, the system of claim 3, wherein the system probe comprises a data structure to gather data in a single process address by taking a snapshot of a kernel image at a selected time interval and to categorize the data (Black: col. 64, lines 54-67).

Regarding claim 5, the system of claim 2, wherein the system probe comprises a Java Native Interface to gather data (Black: col. 82, lines 1-5).

Regarding claim 6, the system of claim 2, wherein the system probe transmits data to an associated base station using Transmission Control Protocol (Black: col. 9, lines 40-42).

Regarding claim 7, the system of claim 2, wherein the at least one base station transmits signals to an associated system probe using User Datagram Protocol (Black: col. 11, lines 11-26).

Regarding claim 8, the system of claim 1, wherein the at least one probe comprises at least one application probe associated with an application (Black: col. 3, lines 4-14).

Regarding claim 9, the system of claim 8, wherein each application probe and an associated base station communicate using User Datagram Protocol (Black: col. 11, lines 11-26).

Regarding claim 10, the system of claim 8, further comprising a queue to store data collected by the at least one application probe until transferred to an associated base station (Black: col. 67, lines 4-24).

Regarding claim 12, the system of claim 10, wherein the base station comprises a data structure to request transfer of any data stored in the queue and any data is transferred during time periods of internal host processor resource utilization that is below a predetermined level (Black: col. 66, lines 21-41).

Regarding claim 13, the system of claim 10, further comprising a Java Virtual Machine on which the queue resides (Black: col. 11, lines 45-67).

Regarding claim 14, the system of claim 10, wherein the stored data is transferred to the base station on a low priority thread relative to normal operations of a host processor (Black: col. 66, lines 59-67).

Regarding claim 15, the system of claim 1, wherein each probe is dynamically controlled by an associated base station using User Datagram Protocol (Black: col. 11, lines 11-26).

Regarding claim 16, the system of claim 1, wherein each probe is dynamically controlled to alter at least a type of performance data being collected and a frequency at which the data is being collected without affecting operation of the associated domain (Black: col. 168, lines 15-57).

Regarding claim 18, the system of claim 1, wherein the base station comprises a copy of the control module associated with each probe served by the base station, wherein the control module and copy are updated each time a user selects a new parameter (Black: col. 168, lines 15-57).

Regarding claim 20, the system of claim 1, further comprising performance gathering code in a source code or a byte code associated with each domain to be monitored by an associated one of the at least one probe (Black: col. 65, lines 1-22).

Regarding claim 21, the system of claim 1, wherein the at least one probe comprises a network probe associated with each host processor to gather network data (Black: col. 167, lines 1-48).

Regarding claim 22, the system of claim 1, wherein the at least one probe comprises a data structure written in a Java programming language (Black: col. 11, lines 45-67).

Regarding claim 23, the system of claim 1, wherein the base station comprises a data collector to collect data from the at least one probe (Black: col. 11, lines 5-10).

Regarding claim 24, the system of claim 23, further comprising at least one relational database to store data from the data collector (Black: col. 9, lines 49-65).

Regarding claim 25, the system of claim 24, wherein the collected data is stored in relation to a time interval in the at least one relational database (Black: col. 10, lines 4-25).

Regarding claim 26, the system of claim 1, further comprising: a plurality of base stations; and a negotiator to balance a quantity of probes served by each base station (Black: col. 164, lines 45-67).

Regarding claim 27, the system of claim 1, further comprising a plurality of base stations, wherein each base station comprises a probe table and wherein the probe table includes a list of probe identifications and an associated probe control module for each probe served by the base station (Black: col. 164, lines 45-67).

Regarding claim 28, the system of claim 1, further comprising: a server to interface between a browser and the at least one base station; and a data structure to run on the server to retrieve and display selected data in response to a query (Black: col. 18, lines 45-col. 19, line 13; Fig. 2A; col. 11, lines 45-67).

Regarding claim 29, the system of claim 28, further comprising an interoperable naming service to register each base station and to assign a unique identifier associated with each base station in response to the base station becoming active (Black: col. 84, lines 22-34).

Regarding claim 30, the system of claim 28, further comprising a probes application to run on the server to control operation of the at least one probe and to retrieve and display the selected data from collected data in response to the query (Black: col. 167, lines 65- col. 168, line 30).

Regarding claim 32, the system of claim 28, further comprising a file to store predetermined queries to retrieve selected data from the collected data (Black: col. 9, lines 49-65).

Regarding claim 33, the system of claim 32, wherein the file comprises predetermined structured query language (SQL) queries to retrieve the selected data from a relational database (Black: col. 9, lines 49-61).

Regarding claim 34, the system of claim 32, wherein the file comprises predetermined mark-up language queries to retrieve the selected data from a relational database (Black: col. 9, lines 49- 61).

Regarding claim 35, the system of claim 32, further comprising a data structure to substitute parameters entered by a user into a chosen query to retrieve the selected data. (Black: col. 167, line 65- col. 168, line 14)

Regarding claim 37, the system of claim 1, further comprising a data structure to display collected data related to performance from one or more domains together (Black: col. 167, line 65- col. 168, line 14).

Regarding claim 38, the system of claim 1, further comprising a data structure to periodically retrieve updated data related to performance for one or more domains and to display the updated data (Black: col. 167, line 65- col. 168, line 14).

Regarding claim 40, the system of claim 1, further comprising a data structure to select the parameters for retrieving data by the at least one probe (Black: col. 167, line 65- col. 168, line 14).

Regarding claim 43, the system of claim 1, further comprising a plurality of probes each to collect data related to performance of a different domain within a distributed enterprise system (Black: col. 167, lines 1-48).

Regarding claim 55, the system of claim 54, where the data is stored with an associated time stamp (Black: col. 38, lines 50-60).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,143,153 by Black et al in view of U.S. Patent Publication No. 20050027892 by McCabe et al.

Regarding claim 11, the Black reference teaches the system of claim 10. The Black reference fails to teach a circular queue.

However, the McCabe reference teaches using an agent to monitor systems with a circular queue of a predetermined capacity (pages 9-10, para 98-102) because it would save both space and time before sending across the network (pages 9-10, para 98-102).

It would have been obvious at the time of the invention to one of ordinary skill in the art to create the system as taught by Black to include a circular queue as taught by McCabe in order to save both space and time before sending across the network (pages 9-10, para 98-99).

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,143,153 by Black et al in view of U.S. Patent Publication No. 20040199815 by Dinker et al.

Regarding claim 19, the Black reference teaches the system of claim 1. The Black reference fails to state pinging the probe.

However, the Dinker reference teaches periodically ping each probe served to check a status of the probe and wherein the probe transmits its current control module information in response to the ping (Dinker: page 5, para 71) in order to test the connection to the agents (Dinker: page 5, para 71).

It would have been obvious at the time of the invention to one of ordinary skill in the art to create the system as taught by Black to include using ping as taught by Dinker in order to test the connection to the agents (Dinker: page 5, para 71).

Claims 31 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,143,153 by Black et al in view of U.S. Patent No. 6,510,432 by Doyle.

Regarding claim 31, the Black reference teaches the system of claim 30. The Black reference fails to teach JSP.

However, the Doyle reference teaches a probes application runs on a Java Server Page (JSP) engine (Doyle: col. 6, lines 1-18) in order to provide cross platform support (Doyle: col. 6, lines 1-18).

It would have been obvious at the time of the invention to one of ordinary skill in the art to create the system as taught by Black to include using JSP as taught by Doyle in order to provide cross platform support (Doyle: col. 6, lines 1-18).

Regarding claim 39, the Black reference teaches the system of claim 38. The Black reference fails to teach JSP.

However, the Doyle reference streaming servlet to display the updated data (Doyle: col. 6, lines 1-18) in order to provide the results across the network (Doyle: col. 6, lines 1-18).

It would have been obvious at the time of the invention to one of ordinary skill in the art to create the system as taught by Black to include using streaming servlet as taught by Doyle in order to provide the results across the network (Doyle: col. 6, lines 1-18).

Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,143,153 by Black et al in view of U.S. Patent No. 6,438,539 by Korolev et al.

Regarding claim 36, the Black reference teaches the system of claim 32. The Black reference fails to teach URLs.

However, the Korolev reference teaches providing a link on a web page to a universal resource locator containing a path to a chosen query in the file in response to parameters selected or entered by a user on the web page (Korolev: col. 12, lines 41-62) to find the URL to information matching the query the best (Korolev: col. 13, lines 26-55)

It would have been obvious at the time of the invention to one of ordinary skill in the art to create the system as taught by Black to include search results with URLs as taught by Korolev in order to find the URL to information matching the query the best (Korolev: col. 13, lines 26-55).

Claims 42, 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,143,153 by Black et al in view of U.S. Patent Publication No. 20030217068 by Fruchtman et al.

Regarding claims 42 and 64, the Black reference teaches the system of claim 1. The Black reference fails to teach releasing resources.

However, the Fruchtman refrence teaches least one probe releases any resources utilizable by the probe in response to the probe being unable to associate with the at least one

base station (Fruchtman: page 2, para 27-28) in order to prevent unused resources (Fruchtman: page 3, para 32).

It would have been obvious at the time of the invention to one of ordinary skill in the art to create the system as taught by Black to include releasing resources as taught by Fruchtman in order to prevent unused resources (Fruchtman: page 3, para 32).

Claims 44-50, 52-65 are rejected as being substantially similar to the limitations cited above. The examiner will map the limitations to the corresponding similar limitations.

Claim tree 1-43	Claim tree 44-65
1, 25, 28	44
2	45
6	46
7	47
8	48
9	49
10	50
16	51
23	53
25	54
New	55
26	56
27	57
29	58
30	59
37	60
38	61
35	62
37	63
38	64
42	65

REMARKS

Applicant has amended claims 1 and 40 to include new limitations about the probes and user selectable parameter.

The Applicant Argues:

The Black reference fails to teach the claim limitations, arguing specifically 1) each at least one probe being embedded in the associated domain, 2) an associated control module containing user selectable parameters for controlling operation of each probe, 3) each probe dynamically receiving a new control module containing changes to the user selectable parameter and 4) a base station receiving the collected data or metric from the associated probes.

In response, the examiner respectfully submits:

The examiner maintains the rejection because the Black reference still anticipates the claim amendments and limitations.

Regarding argument 1, the Black reference teaches a probe in a monitoring and performance system that collects data related to performance of an associated domain (Fig. 2b shows the architecture of the system described in col. 169, line 14-64; col. 2, lines 24-25 and col.s 12 and 13). Probes are the software applicants and agents that run collecting and monitoring the performance data.

Regarding argument 2, the Black reference teaches an associated control module containing user selectable parameters for controlling operation of each probe (Black: col. 12, lines 61- col. 13, line 11; col. 167, lines 14-col. 168, line 14). Black col. 12 and 13 shows administrators configure network devices in each of the domains through the NMS servers. Col. 167 and 168 illustrate a user (network manager) selects a resource through a GUI and selects attributes to be monitors (Figures 66a-66e). The associated control module is the software that governs the operation of the probe. As seen in col. 168-169, Black shows those changes and parameters for controlling the probes activity are sent to the client.

Regarding argument 3, when the manager is finished, each probe receives its new module changes with the new parameters and attributes specified by the network manager to be monitored (col. 169- col. 170 line 7).

Regarding argument 4, Black teaches a base station receiving the collected data or metric from the associated probes in col. 12, line 61- col. 13, line 11; Fig 2b; central NMS, DB. Col. 12, states the local NMS database collects "all logging data" and replicates it to the central NMS server, tag 854. The Black teaches the probes check the designated resources and attributes.

Some attributes are compared against thresholds as taught in col. 167. lines 57-64 teach "if the threshold rule is met, then, in accordance with the reporting struction also retrieved from the Dynamic Threshold table, the application/TML may do nothing or notify an SNMP master agent and/or a global log service logs in the event in one or more files within hard drive." The language does not say it ignores it. It shows that it can report and notify in the form of logging data.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R Bruckart whose telephone number 571-272-3982. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571) 272-4006. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular communications and after final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the examiner whose telephone number is 571-272-3982.

Benjamin R Bruckart
Examiner
Art Unit 2155

SALEH NAJJAR
SUPERVISORY PATENT EXAMINER